IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.4.2007

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(NPD) No.226 of 2006

K.Muthuramalingam .. Petitioner/ Tenant

vs.

Kalyani Ragunathan .. Respondent/ Land lady

Revision Petition u/s 25 (1) of the T.N. Buildings(Lease and Rent(Control Act 18/60 as amended by Act 23/73 and Act 1/80 filed against the order dated 3.1.2006, passed in R.C.A.No.687/2004 by the VII Judge, Court of Small Causes, Chennai (Rent Control Appellate Authority), confirming the order passed in R.C.O.P.No.574/2001 dated 27.4.2004 passed by the Rent Controller, X Judge, Court of Small Causes, Chennai.

For Petitioner : Mr.Ashok Menon, for
M/s.Goklaney Associates.

For Respondent : Mr.V.Ragavachari

ORDER:

This Revision Petition has been filed against the order dated passed in R.C.A.No.687/2004 by the VII Judge, Court of Small Causes, Chennai (Rent Control Appellate Authority), confirming the order passed in R.C.O.P.No.574/2001 dated 27.4.2004 passed by the Rent Controller, X Judge, Court of Small Causes, Chennai.

2.The tenant is the revision petitioner. He is aggrieved by the order of the Rent Control Appellate Authority dated 3.1.2006 made in R.C.A.No.687/2004 holding that the respondent herein is entitled to evict the petitioner herein for her own residential occupation of the petition premises. By the above said order dated 3.1.2006, the appellate authority confirmed the order of the Rent Controller dated 27.4.2004 made in RCOP No.574/2001 filed by the respondent herein under Sec.10(3)(a)(i) of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960, hereinafter called 'the Act' for evicting the revision petitioner herein on the ground of owner's occupation.

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3.In R.C.O.P.No.574/2001, the respondent herein as landlady stated that the revision petitioner is a tenant under her paying a monthly rent of Rs.750/- and the tenanted portion is the outhouse of premises bearing old No.7, new No.13, Veerabadran Iyer Street, Nungambakkam, measuring an extent of 400 sq.ft., and consisting of a bed room, hall, kitchen and bath room. The landlady is having 2 sons and she is staying with her aged husband, with her elder son at the premises bearing Old No.8, New No.11, which property belongs to her elder son and the same is situated in the front portion of the landlady's premises bearing Old No.7, New No.13. Apart from the outhouse, which is under the occupation of the revision petitioner-tenant, the property of the landlady has two portions, one in the ground floor, which is under the occupation of her younger son and another in the 1st floor, which is under the occupation of another tenant.

4.It is the case of the landlady in RCOP No.574/2001 that she and her husband found it very difficult to live with their elder son in his premises on account of friction in relationship with his elder son and his wife. Therefore she bona fidely required the outhouse portion under the occupation of the revision petitioner for her residential purpose. Hence she filed RCOP No.574/2001 for the above said relief.

5.The revision petitioner as tenant resisted RCOP No.574/2001 by filing a detailed counter statement. It is the tenant's contention that there is no bona fide in the claim of the landlady. He stated that the younger son who was staying in ground floor portion of the landlady's property has already vacated that portion. He referred to O.S.No.4640/1998 filed by him against the landlady for a permanent injunction restraining the landlady from disturbing the tenant's peaceful possession of the petition premises. O.S.No.4640/98 was decreed exparte on 5.2.2002. The landlady filed RCOP No.2125/98 against the tenant for eviction on the ground of wilful default in the payment of rent and the same was dismissed for default on 1.11.2000.

6.It is further stated by the tenant in his counter that as the landlady had drastically reduced the water supply to his portion, the tenant filed RCOP No.2306/1999 for restoration of water supply. An order of interim restoration was passed, against which the landlady filed an appeal, which was dismissed. Against the dismissal of appeal, the landlady filed CRP No.1605/2001 and the same was allowed by the High court. The tenant filed SLP No.12488/2001 which was allowed by the Supreme Court. The Supreme Court directed the rent controller to complete the trial in RCOP No.2306/99 within 6 months. In 3rd week of May 2002, the tenant came to know that the landlady applied to the Commissioner,

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Corporation of Chennai for permission to demolish the premises in which the tenant is in occupation of the outhouse. As the landlady made arrangements to demolish the premises, the tenant filed O.S.No.3114/2002 for a permanent injunction restraining the landlady from demolishing the premises except through due process of law. Along with the suit, I.A.No.8953/2002 was filed for interim injunction and an interim injunction was granted which was made absolute insofar as the outhouse portion is concerned after hearing the counsel for the landlady. As it was mentioned in the counter in the I.A.No.8953/2002 that the landlady applied for an order of demolition and reconstruction and the said application was not processed in view of interim orders, the tenant filed a writ petition in W.P.No.24170/2002 for a mandamus forbearing the Commissioner, Corporation of Chennai from granting permission to the landlady to demolish the premises as long as the tenant is a lawful tenant in the outhouse portion. The writ petition was dismissed on 5.7.2002 with an observation to proceed further before the civil court seeking for appropriate relief. Therefore the tenant filed O.S.No.3835/2002 for a declaration to declare that the defendants in the suit are not entitled to permit the landlady to demolish the premises as long as he is a lawful tenant in the outhouse portion. An interim injunction was granted by the trial court in I.A.No.10878/2002, against which the landlady filed C.M.A., which is pending before the appellate court. Therefore, according to the tenant the above referred to legal proceedings would establish that there is no bona fide on the part of the landlady. The rent controller by order dated 27.4.2004 allowed the RCOP by holding that the landlady is entitled for an order of eviction on the ground of own use and occupation, against which the tenant filed RCA No.687/2004 and the appellate authority by order dated 3.1.2006, dismissed the appeal and confirmed the order of the rent controller.

6.Before the appellate authority the tenant filed M.P.No.777/2005 and M.P.No.11149/2005 to receive additional documents and the landlady also filed M.P.No.915/2005 to receive additional documents. M.P.No.777/2005 was allowed and on that basis petition copy of RCOP No.171/2004 was marked as Ex.R11 and similarly M.P.No.11149/2005 was also allowed and on that basis the copy of the General Power of Attorney deed executed by the landlady was marked as Ex.R12, the copy of the deposition of witness examined in RCOP No.171/2004 was marked as Ex.R13, the order copy in CRP No.610/2003 was marked as Ex.R14 and the order of the Supreme Court in SLP No.12488/2001 was marked as Ex.R15. M.P.No.915/2005 filed by the landlady was also allowed and on that basis a copy of the order made in CRP No.881/2005 was marked as Ex.P2, the copy of the petition in RCOP No.171/2004 and the orders passed thereon was marked as Ex.P3 and the copy of the memo filed in RCOP No.171/2004 was marked as Ex.P4.

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7.RCOP No.171/2004 was filed by the landlady pending RCOP No.574/2001 on the ground of demolition and reconstruction, but the landlady has chosen not to press RCOP No.171/2004 for the reasons stated therein in Ex.P4 memo.

8.The appellate authority after going through the entire evidence felt that considering the old age of the landlady and her husband, their desire to reside in the ground floor portion rented to the tenant is perfectly honest and justified. Insofar as the preceding litigations and pending litigations are concerned, the appellate authority observed that mere filing of petitions for eviction on different grounds at different point of time according to necessity would not be a valid reason to suspect the bona fide of the landlady. Coming to the question of filing RCOP No.171/2004 on the ground of demolition and reconstruction, the appellate authority held that RCOP No.171/2004 was later on withdrawn, there is no inconsistent and contradictory plea in the present RCOP filed for owner's occupation. Hence the appellate authority confirmed the order of the rent controller.

9.I have heard the learned counsel for the petitioner and the learned counsel for the respondent. I have also perused the documents filed and the judgments referred to by them in support of their submissions.

10.The learned counsel for the petitioner strenuously contended that it is a case of both the authorities below shutting their eyes to the evidence let in before them and therefore this concurrent mistakes committed by the authorities below ought to be interfered with under Sec.25 of the Act 18 of 1960. The learned counsel drew my attention to the entire litigation filed by the parties and contended that this itself would prove that there is no bona fide on the part of the landlady. The learned counsel for the petitioner specifically drew my attention to RCOP No.171/2004 filed by the landlady pending RCOP No.574/2001 and submitted that the pleadings in RCOP No.171/2004 and the pleadings in RCOP No.574/2001 are mutually contradictory to each other and in such circumstances, the mala fide intention of the landlady was clearly established. The learned counsel further drew my attention to the conduct of the landlady in withdrawing RCOP No.171/2004 after realising that that could be fatal to her case in RCOP No.574/2001. The learned counsel relied on the following decisions in support of his submissions:

1)2000(2) M.L.J. 1(S.C.) (Chandramohan v. Sengottaiyan)
2)1989(1) L.W.155 (Durgai Ammal v. R.T.Mani)
3)1988(1) L.W.53 Summary of Cases (Extracts)-Pyarelal Malhotra, (M/s. v. M/s.Lakshmi Vilas Bank)
4)2001(1) M.L.J. 390 (Geetha v. Sankaran)

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5)2000(2)MLJ 495 (Vijayan v. M/s.Kalaimagal Account Book Shop)
6)2001(3)L.W.224 (M/s.Shaw Wallace & Co.Ltd. v. Govindas Purushothamdas & Anr.(S.C.)
7)2000(2)M.L.J. 204 (Srirangaraja v. Ponniah Thevar)
8)2000(2)L.W.630 (Chandramohan,C. v.Sengottaiyan & ors (S.C.)
9)2002(2)L.W.611 (S.V.Janardanam and another v. D.Kivraj Sowkar and 2 others)
10)1998(1)MLJ 155 (Karuppanna Gounder v. Visuvasam)
11)2002(2)L.W.559 (Loganathan, S. v. V.S.Rangasamy)
12)2000(2)M.L.J 31 (Suganthi v. Sambalingam)
13)2001(2)MLJ 80(S.C.) (M/s.Shaw Wallace and Co.Ltd. v. Govindas Purushothamdas)
14)2000(1)CTC 634 (Ispahani,S.M. v. Harrington House School)
15)2004(2)LW 440(Shanmuga Sundaram v. A.S.Kamalam)
16)2001(5)SCC 705(Deena Nath v. Pooran Lal)
17)2000(1)MLJ 25(Sivasubramaniam v. Kashinath Pujari)
18)1983(2)MLJ 191 (Ranganatha Mudaliar v. Yakoof Khan)
19)AIR 1992 S.C. 700(Ramesh Kumar v. Kesho Ram)
20)1997(3)L.W.235(Jermons,J. v. Alimmal & others)
21)1985(1)MLJ 106 (M/s.Thilagaraj Match Works v. Sundaresan)
22)1994(2)L.W.152(Sankaran, A and another v. Balasundaram S.K. and another)
23)2002(1)L.W.600(Siddalingamma and another v. mamtha Shenoy)
24)AIR 1994 S.C. 800 (Shadi Singh v. Rakaha)
25)2005(5)CTC 585(Abu Tahir, M. v. M.Rahamathulla).

11.Per contra the learned counsel for the respondent vehemently contended that it is a typical case of the tenant harassing a landlady by filing litigations after litigations and when both the authorities below, on the basis of evidence let in before them, concurrently held that the bona fide of the landlady is proved, High Court cannot interfere with the same under Sec.25 of the Act.

12.The learned counsel for the respondent relied on the following decisions in support of his submissions:
1)1967(1)MLJ 289 (N.Sampathu Chetty v. S.V.Bapulal)
2)2001(2)L.W.647(South Indian Bank Ltd., etc., v. Saroja Govindarajan etc.)
3)1997-3-L.W.141(S.Mariappan v. Kadar Beevi)
4)2001(8)SCC 561(Siddalingamma v. Mamtha Shenoy)
5)AIR 1997 S.C. 2339 (Kamleshwar Prasad v. Pradumanju Agarwal)
6)2004(5)SCC 772(Shakuntaala Bai v. Narayan Das)
7)2004(8)SCC 490 (Pratap Rai Tanwani v. Uttam Chand)
8)1996(I)CTC 681(Rengaiyan, N. v. A.M.Noorullah)
9)2004(3)MLJ 333(Janakavalli Ammal v. The Regional Manager, Tamil Nadu Handloom Weavers' Co-operative Society Limited, Vellore)
10)2001(1)M.L.J.110(Hatim and Co. v. Radhakrishnan)
11)1999 MLJ 93(C.Prasad Rao v. C.Narasimhan)

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12)1998 MLJ 270(M/s.Boston v. Akbar)
13)2000 MLJ 19 (Munawar Jan Begum v. Subramaniam)
14)2001(3) CTC 206(Karur Ghee Stores v. N.Palaniappan)
15)1999 M.L.J.(Supp.) 389(Dalichand v. Ramalingam)
16)1998(III)CTC 467(Vasantha Leela v. N.Vadivelu Chettiar)
17)98 L.W.29 (J.S.-Summary of Cases(Extracts)-Band Box Dry Cleaners v. K.Kuppuswamy)
18)2004(2)M.L.J.194(Alis v. Jayalakshmi)
19)1997-1-L.W.727(R.Perianna Asari and another v. Jayakumar).

13.I have considered the rival submissions with regard to facts and citations.

14.Under Sec.10(3)(a) of the Act, a landlord may apply to the controller for an order directing the tenant to put the landlord in possession of the building, in case it is a residential building, if the landlord requires it for his own occupation or for the occupation of any member of his family and if he or any member of his family is not occupying the residential building of his own in the city, town or village concerned. The controller if he is satisfied that the claim of the landlord is bona fide, make an order directing the tenant to put the landlord in possession of the building on such date as may be specified by the controller and if the controller is not so satisfied, he shall make an order rejecting the application.

15.Therefore if the landlord wants a building under the occupation of the tenant for his own use and occupation, he has to prove (1)that he requires it for his own occupation, (2)he is not occupying a residential building of his own in the place concerned. Apart from that, he has to satisfy the controller that the claim is bona fide.

16.RCOP No.574/2001 was filed by the landlady directing the tenant to deliver vacant possession of the portion in the tenant's occupation as she wanted to reside there with her husband. It is the case of the landlady that she is residing with her eldest son and his wife and due to some friction with her elder son, she wanted to reside in her premises in which there are 3 portions. In the ground floor portion, the landlady's younger son is living there with his family and another tenant is in occupation of the 1st floor portion. The tenant is in the occupation of the outhouse. Therefore the landlady being an elderly person with her older husband, could not claim the stairs and also did not want to disturb their younger son, wanted the outhouse portion for their own use and occupation. The claim of the landlady was alleged to be a mala fide intention by the tenant by pointing out the number of litigations filed between the parties and also the subsequent development of the younger son vacating the ground floor premises.

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Both the authorities below concurrently held on the basis of evidence that the claim of the landlord is bona fide. Whether such concurrent findings with regard to the question of bona fide could be upset by the High Court under Sec.25 of the Act is a question that now arises for consideration.

17.Now it is settled law that the revisional jurisdiction vested in the High Court under Sec.25 of the Act is wider than Sec.115 of C.P.C., and the High court is entitled to satisfy itself as to regularity of proceedings of the correctness, legality or propriety of any decision or order passed therein and if on examination, it appears to the High court any such decision or order should be modified, annulled, reversed or remitted for reconsideration, it may pass such orders accordingly. Where the findings recorded by the appellate authorities are illegal, erroneous or perverse the High court having regard to the ambit of its revisional jurisdiction under Sec.25 of the Act, will be well within its jurisdiction in reversing the findings impugned before it and recording its own findings. When the decision of the authorities below is perverse and based on no evidence, the High court can set aside that order under Sec.25 of the Act. The principle has been set out in the judgments 1 to 15 and 17 (cited supra) in para 10 namely-

1)2000(2) M.L.J. 1(S.C.) (Chandramohan v. Sengottaiyan)
2)1989(1) L.W.155 (Durgai Ammal v. R.T.Mani)
3)1988(1) L.W.53 Summary of Cases (Extracts)-Pyarelal Malhotra, (M/s. v. M/s.Lakshmi Vilas Bank)
4)2001(1) M.L.J. 390 (Geetha v. Sankaran)
5)2000(2)MLJ 495 (Vijayan v. M/s.Kalaimagal Account Book Shop)
6)2001(3)L.W.224 (M/s.Shaw Wallace & Co.Ltd. v. Govindas Purushothamdas & Anr.(S.C.)
7)2000(2)M.L.J. 204 (Srirangaraja v. Ponniah Thevar)
8)2000(2)L.W.630 (Chandramohan,C. v.Sengottaiyan & ors (S.C.)
9)2002(2)L.W.611 (S.V.Janardanam and another v. D.Kivraj Sowkar and 2 others)
10)1998(1)MLJ 155 (Karuppanna Gounder v. Visuvasam)
11)2002(2)L.W.559 (Loganathan, S. v. V.S.Rangasamy)
12)2000(2)M.L.J 31 (Suganthi v. Sambalingam)
13)2001(2)MLJ 80(S.C.) (M/s.Shaw Wallace and Co.Ltd. v. Govindas Purushothamdas)
14)2000(1)CTC 634 (Ispahani,S.M. v. Harrington House School)
15)2004(2)LW 440(Shanmuga Sundaram v. A.S.Kamalam)
16)2000(1)MLJ 25(Sivasubramaniam v. Kashinath Pujari)

18.At the same time, the power conferred under Sec.25 of the Act is not wide enough to go into the question of fact in detail and assess the evidence and unless the evidence proved to be false or incorrect, the High Court will not interfere with the findings of fact rendered concurrently by the authorities below. When the

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High Court does not find any illegality, impropriety or irregularity in the orders of the authorities below, no interference is called for under Sec.25 of the Act. It is not desirable for the revisional court to interfere with the concurrent findings when there is no patent error or perversity in the approach of the authorities below. Revisional jurisdiction is not akin to fullfledged appeal and the High Court sitting in revision must be very careful about launching an independent re-appreciation of evidence and substitute findings of rent control authorities with another when the materials before the court could equally sustain conclusion arrived at.

19.The above principles have been laid down in the following judgments which are referred above: They are-

1996(1)CTC 681(Rengaiyan, N. v. A.M.Noorullah)
2001(1)M.L.J.110(Hatim and Co. v. Radhakrishnan)
1999 MLJ 93(C.Prasad Rao v. C.Narasimhan)
1998 MLJ 270(M/s.Boston v. Akbar)
2000 MLJ 19(Karur Ghee Stores rep., by V.Periasamy vs. M.Palaniappan & another)
2001(3) CTC 206(Karur Ghee Stores v. N.Palaniappan)
1999 M.L.J.(Supp.) 389(Dalichand v. Ramalingam)
1998(III)CTC 467(Vasantha Leela v. N.Vadivelu Chettiar)
98L.W.29 (J.S.-Summary of Cases(Extracts)-Band Box Dry Cleaners v. K.Kuppuswamy)
2004(2)M.L.J.194(Alis v. Jayalakshmi)
1997-1-L.W.727(R.Perianna Asari and another v. Jayakumar).

20.With the scope of Sec.25 of the Act, let me consider whether a case has been made out by the revision petitioner warranting interference when both the authorities below have concurrently held that the landlady has proved her bona fide in requiring the rented portion for their own use and occupation.

21.The question of bona fide is a mixed question of fact and law and there must be an actual pressing need, not a mere whim or fanciful desire. Mere desire of the landlady to live separately cannot be attributed to the need for the premises occupied by the tenant. The need must be bona fide, genuine, honest and conceived in good faith. A desire is not a substitute for the need for the premises. The bona fide is not the impulse or desire of the landlady but there must be an element of need for the landlady before it could be stated that she requires the premises for her own occupation. The question to be asked by the court is whether the need of the landlady can be said to be real, natural, sincere and honest. If the answer is in the positive then the need is bona fide.

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22.These principles have been clearly set out in the decisions-, which are referred above and they are,
2001(5)SCC 705(Deena Nath v. Pooran Lal)
2000(1)MLJ 25(Sivasubramaniam v. Kashinath Pujari)
1985(1)MLJ 106 (M/s.Thilagaraj Match Works v. Sundaresan)
1994(2)L.W.152(Sankaran, A and another v. Balasundaram S.K. and another)
2002(1)L.W.600(Siddalingamma and another v. mamtha Shenoy).

23.Once it is clear that the claim is not a device, very little evidence is required to find that the claim is an honest one. Bona fide is not a meaningless jargon but it has to be culled out from the averments contained in the petition and from the evidence adduced in the proceedings. It is not always necessary to prove the bona fide beyond all reasonable doubt as in criminal proceedings. If the requirement is found to be bona fide, then the choice is left to the landlord to decide as to which building he should occupy and the tenant will not have any say in the matter. The concept of bona fide requirement of the landlord requires practical approach and court must guard against approach which is too liberal, too constructive or pedantic.

24.The above principles have been laid down by the decisions in-, which have been already already referred above. They are,
1967(1)MLJ 289 (N.Sampathu Chettyv. S.V.bapulal)
2001(2)L.W.647(South Indian Bank Ltd., etc., v. Saroja Govindarajan etc.)
1997-3-L.W.141(S.Mariappan v. Kadar Beevi)
2001(8)SCC 561(Siddalingamma v. Mamtha Shenoy)

25.In the light of the above decisions with regard to bona fide, let me consider whether the landlady in the present case proved her bona fide in requiring the premises under the occupation of the tenant for her use and occupation.

26.It is not in dispute that there has been a strained relationship between the tenant and the landlady right from the year 1998 when the tenant filed O.S.No.4640/1998 for an injunction restraining the landlady from dispossessing the tenant by force. An order of interim injunction was granted and the suit itself was decreed exparte. The landlady on her part filed RCOP No.2125/98 for eviction on the ground of wilful default, nuisance and owner's occupation and the same was dismissed for default. The tenant filed RCOP No.2306/99 for restoration of water supply and after obtaining an interim order for restoration of water supply, the tenant filed E.P.No.285/2000 to execute the interim order. Against the interim order of restoration, the landlady filed RCA.846/2000 and the same was dismissed. Against which the landlady filed CRP No.1605/2001 which was allowed by this court.

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The tenant filed SLP No.12488/2001 before the Supreme Court and the Supreme Court by order dated 11.7.2002 directed the rent controller to dispose of RCOP No.2306/99 expeditiously, if possible within 6 months. While ordering that the interim order granted by the Supreme court on 10.8.2001 will continue till the rent controller decides RCOP No.2306/99. The interim order passed by the Supreme Court is that the bore-well stated to have been dug by the tenant on the premises shall not be removed. It is also not in dispute that RCOP No.2306/99 was allowed in favour of the tenant against which RCA No.836/2005 was filed by the landlady and the same is said to be pending.

27.Thus it is established that the relationship is so strained between the parties to such an extent that even for restoration of water supply the tenant had to approach the highest court of this land.

28.Further it is also not in dispute that in the middle of 2002 there was an attempt on the part of the landlady to demolish the entire premises including the portion under the occupation of the tenant necessitating the tenant to file O.S.No.3114/2002 for a permanent injunction restraining the landlady from demolishing the premiss except by due process of law. Initially an interim injunction was granted which was made absolute restricting the injunction insofar as the outhouse portion under occupation of the tenant only. In the counter filed in the above suit, it was admitted by the landlady that she applied for demolition and reconstruction to the corporation authorities. In the meanwhile, the present RCOP was filed requiring the portion bona fidely for the landlady's own use and occupation. After the RCOP was allowed in favour of the landlady, RCA No.687/2004 was filed by the tenant challenging the order of eviction. In the meanwhile, another RCOP was filed again by the landlady in RCOP No.171/2004 for an order of eviction on the ground of demolition and reconstruction and the same was later on withdrawn by the landlady. By taking into consideration, the entire conduct of the landlady, in filing rent control petitions and withdrawing the same or allowing it to be dismissed for default, it cannot be said that there is bona fide on the part of the landlady in requiring the tenant's portion for her own use and occupation. After all, bona fide requirement is to be found on the basis of the pleadings, the entire evidence let in, the totality of circumstances and the overall conduct of the landlady. If the totality of circumstances and the overall conduct of the landlady are taken into consideration, it is extremely difficult to comprehend that the landlady required the premises bona fidely and honestly for her own use and occupation. In fact, the filing of RCOP No.171/2004 and the petition and the evidence let in in that RCOP were brought to the knowledge of the Appellate Authority by filing a petition by the tenant for

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producing additional documents and on the basis of that petition, these documents were marked as Exs.R11 to R15. In RCOP No.171/2004 it is stated by the landlady that she has obtained necessary permission from the appropriate authorities for the demolition of the existing building including the outhouse in which the tenant is residing. It is further stated by her that the landlady wanted to construct a modern multi-storey building in the said property for her own occupation. Therefore she has decided to demolish her own building with a view to augment the income and put up a multi-storey building in the premises. She had also given an undertaking that the demolition would commence within one month and complete it within 3 months.

29.From the above averments in RCOP No.171/2004, it is explicitly clear that the landlady has now taken a different stand from what was averred in RCOP No.574/2001. Further, in RCOP No.171/2004, P.W.1 who is the daughter-in-law of the landlady admitted that her husband's younger brother and her family members are residing in some other place in Chennai. This statement of the daughter-in-law of the landlady goes against the pleading of the landlady in RCOP No.574/2001 that her younger son and her family members are living in the ground floor of her property.

30.The appellate authority erred in law in refusing to look into Exs.R11 to R15 on the ground that RCOP No.171/2004 was later on withdrawn by the landlady and therefore the landlady stuck to her claim on the basis of ownership occupation only. This approach of the appellate authority in taking a too liberalistic, pedantic and hyper-technical view is in my considered opinion definitely warrants interference by this court under Sec.25 of the Act.

31.In fact, the learned counsel for the tenant submitted that eviction on the ground of owner's occupation and also on the ground of demolition and reconstruction do not synchronise and they are mutually inconsistent. The learned counsel strongly relied on the decision of this court reported in 2005(5) CTC 585 (cited supra).

32.In the above decision this court after going through Sec.14(3)(a)(iii) and Sec.14(1)(b) of the Act, held as follows:

> "11. ...that Section 10(3)(a)(iii) of the Act is quite inconsistent with Section 14(1)(b) of the Act, since the landlord is attempting to evict the tenant, on these two grounds. Realizing this difficulty, it was conceded before me that personal occupation is not pressed, and eviction is aimed only on the ground of demolition and reconstruction."

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33.From the above, it is very clear that after taking both the grounds of landlord's own occupation and his requirement for demolition and reconstruction on the ground of personal occupation, the ground of personal occupation was not pressed before the court and eviction was sought only on ground of demolition and reconstruction.

34.In the case in hand, the landlady did not press RCOP No.171/2004 filed for demolition and reconstruction and she has been pressing the ground of owner's occupation only. However, considering the averments in RCOP No.574/2001 and the averments in RCOP No.171/2004 which are mutually inconsistent and destructive and considering her conduct of withdrawing RCOP No.171/2004, that too, after giving evidence in that RCOP, the only inescapable conclusion that could be arrived at is that there is no bona fide on the part of the landlady in requiring the portion for their own use and occupation. When the appellate authority has failed to appreciate the entire evidence adduced before him and in fact refused to consider Exs.R11 to R15 in its proper perspective by taking a too pedantic and hyper-technical approach, this court can certainly interfere with the findings of the appellate authority. After all, bona fide is not an empty jargon and the same is to be established by going into the totality of circumstances and the conduct of the landlady.

35.The learned counsel for the petitioner further contended that in view of the subsequent developments namely, the landlady filing an RCOP No.171/2004 for demolition and reconstruction, withdrawing the same after letting in evidence and the deposition of the landlady's daughter-in-law that the landlady's younger son and his family members are not residing in the ground floor portion of the building, there is no requirement at all for the landlady seeking eviction of the tenant.

36.But the learned counsel for the landlady submitted that what is to be decided is whether the landlady bonafidely requires the building on the date of filing the RCOP and if it is established that her bona fide was true at the time of filing the eviction petition, then eviction is to be ordered.

37.It is settled law that courts could take note of the subsequent events and arrive at a conclusion on the basis of those events. Courts can definitely take note of the altered circumstances and mould the relief in accordance with the circumstances as they stand at that time when the order is finally made. Whenever subsequent events of fact or law which have a material bearing, the court is not precluded from taking a

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cautious cognizance of the subsequent changes to mould the relief. Subsequent events could even be taken note of by the High Court at the time of revision.

38.This principle has been set out in the decisions reported in-, which have been referred above and they are,
1)1983(2)MLJ 191(Ranganatha Mudaliar v. Yakoof Khan)
2)AIR 1992 S.C. 700(Ramesh Kumar v. Kesho Ram)
3)1994 S.C.800(Shadi Singh v. Rakaha)
4)1997(3)L.W.235(Jermons,J. v. Alimmal & others)

39.It is equally true that when the landlord who obtained an order of eviction on the ground of requiring the premises for his own use and occupation passed away pending appeal or revision, the subsequent event of death of the landlord cannot be put against the legal heirs to defend the appeal or revision on the cause of action which had been originally pleaded (as held in 1997 S.C. 2399 (cited supra) and 2004(5)SCC 772(cited supra). It is also pernicious unjust to shut the door before an applicant just on the eve of his reaching the final after passing through all the previous levels of litigations, merely on the ground that certain developments occurred pendente lite because the opposite party succeeded in prolonging the matter for such unduly long period. {2004(8)SCC 490(cited supra}.

40.In the present case, the Subsequent events are also to be considered in denying the relief to the landlady because it was the landlady who filed another RCOP on the ground of demolition and reconstruction containing inconsistent and mutually destructive pleadings in which her own daughter-in-law deposed that the landlady's younger son is residing elsewhere and not in her property. Further, after realising the folly of filing RCOP No.171/2004, she withdrew the said RCOP as not pressed after letting in evidence. Therefore the subsequent events ought to be taken cautious cognizance of and it is to be held that the landlady has miserably failed to establish her bona fide in requiring the outhouse portion under the occupation of the tenant.

41.In the result, the order of the authorities below are set aside and this Civil Revision Petition is allowed. No costs. The connected C.M.P., is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sks

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To

1. The Registrar
Court of Small Causes,
Chennai.

2. The Record Keeper,
VR Section,
High Court, Madras.

1 cc to Mr.V. Raghavachari, Advocate, sr. 22756

C.R.P.(NPD)226/06.

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